

STREETSCAPE ENHANCEMENT PROJECT BETWEEN SELF-HELP VENTURES FUND
AND THE CITY OF DURHAM

THIS AGREEMENT (the “Agreement” or “Contract”), is made, dated and entered into as of the _____ day of _____, 2014, by and between the City of Durham (the “City”), a North Carolina municipal corporation and Self-Help Ventures Fund (“Self-Help”), a non-profit corporation organized and existing under the laws of the State of North Carolina. The City and Developer are also referred to individually as “Party” and collectively as “Parties.”

The parties, intending to be legally bound, agree as follows:

1. Background and Purpose.

Self-Help and its affiliates are constructing a project located at the corner of Kent and W. Chapel Hill Streets in Durham. (Self-Help and its affiliates are hereinafter collectively referred as the “Developer”). The project includes: (a) demolition and removal of existing building(s); (b) construction of two new buildings that will house approximately 10,000 square feet of retail space facing W. Chapel Hill Street and 33,000 square feet of office space; (c) designation of green space; (d) construction of public right-of-way and streetscape improvements near the intersection of Kent St. and W. Chapel Hill Street; and (e) establishment of off-street parking (hereinafter, collectively referred to as the “Kent Corner Project”). A more detailed depiction of the Kent Corner Project is presented in the city approved site plan, case no. D1200337. The Developer is required by the site plan to make certain repairs and reconfigurations to the roadway and intersection adjacent to the Kent Corner Project. The City had previously identified portions of W. Chapel Hill Street, (including the area of the Kent Corner Project on Chapel Hills Street), as a “Targeted Area” for community and economic development purposes, and has contemplated making certain streetscape enhancements for the W. Chapel Hill Street Targeted Area. The City and Developer wish to coordinate some of these same streetscape enhancement concepts into both the Kent Corner Project and adjoining sidewalk areas. The Developer has agreed to make these streetscape enhancements (beyond what is required by city code and Unified Development Ordinance), if the City agrees to contribute to the cost of such enhancement. This Agreement is entered into pursuant N.C. General Statute 160A-309, which allows a city to enter into contracts with private developers for the construction of right-of-way improvements adjacent and ancillary to a private development.

2. Definitions.

2.1 “City Payment,” refers to the payment the Developer is eligible to receive if the Developer meets the conditions of this Agreement.

2.2 “Construction” refers to the construction work activities necessary for the completion of the Streetscape Enhancements executed by means of entering into agreements with other persons or entities. The term Construction includes new construction, reconstruction, repair and renovation work, landscape architecture and engineering, as well as purchasing, acquiring and renting of apparatus, supplies, materials and equipment as appropriate for that work.

2.3 “Maximum Public Investment,” -- refers to the maximum dollar amount available from the City to the Developer for all the Streetscape Enhancements. The Maximum Public

Investment amount shall be \$220,000.

2.4 “Site Plan,” -- refers to (a) the final amended site plan for the Kent Corner Project submitted to, and approved by, the City – County Planning Department in accordance with the requirements of the Unified Development Ordinance (UDO) and initially approved as Site Plan Case No. D1200337; and (b) field adjustments to such site plan.

2.5 “Streetscape Contractor(s)” —refers to a general contractor licensed under NC law with the appropriate classification to perform the Construction. The Parties agree that the Construction work for the Streetscape Enhancements may be performed by more than one Streetscape Contractor acceptable to the City Manager in his reasonable discretion. The approval or refusal to approve a Streetscape Contractor by the City Manager shall be based on the proposed Streetscape Contractor’s (i) status as a licensed general contractor in the State of North Carolina; and (ii) experience on commercial construction projects of a similar nature and size as the Construction work contemplated under this Agreement. C.T. Wilson Construction Company is hereby approved as an acceptable Streetscape Contractor.

2.6 “Streetscape Enhancements” — refers to the roadway and sidewalk improvements within the public right-of-way depicted on the schematic streetscape plan sheet prepared by Coulter Jewell Thames titled “West Chapel Hill Street Streetscape Improvements”, dated December 11, 2013, with a last revision date of April 15, 2014 (the “CJT Streetscape Plan”). The Streetscape Enhancements are inclusive of the right-of-way improvements extending beyond the Kent Corner Project east along Chapel Hill Street to Carroll Street and south along Kent Street to Jackson Street, all as depicted on the CJT Streetscape Plan.

3. Requirements and Obligations of the Parties.

3.1 Construction of the Streetscape Enhancements

3.1.1 Design and Final Site Plan Approval. Developer shall submit to the City-County Planning Department amendments to the Site Plan as necessary to incorporate those Streetscape Enhancements located within the limits of the Site Plan for the Kent Corner Project. The final, approved Site Plan shall include all the right-of-way elements depicted in the CJT Streetscape Plan including, but not limited to, 16” double brick band, tree plantings, benches, trash cans and bike rack(s), except as otherwise accepted by the City Manager in his or her reasonable discretion.

3.1.2 Construction Details and Design. The Developer shall enter into a contract with an engineer acceptable to the City to complete the necessary detailed construction drawings, plans and specifications for the Streetscape Enhancements. The detailed construction drawings, plans and specifications shall be reviewed and approved by City in accordance with standard procedures for work to be performed in the public right-of-way. Coulter Jewell Thames, P.A. is hereby approved as an acceptable engineer.

3.1.3 Bonding. After approval by the City of the updated Site Plan and detailed construction drawings, plans and specifications for the Streetscape Enhancements, the

Developer shall provide the City a performance and payment bond in a form generally accepted by the City for other construction projects or in such other form as is acceptable in the reasonable discretion of the City Manager. The bonds may name the Streetscape Contractor as the principal party. The performance bond shall be conditioned on the faithful performance of the Construction required for the completion of the Streetscape Enhancements. The minimum bonded amount shall be equal to the Maximum Public Investment.

3.1.4 Construction of Streetscape Enhancements. The Developer may cause the Construction of the Streetscape Enhancements upon direction of the city Public Works Department after the Developer has satisfied preconditions of Sections 3.1.1, 3.1.2, and 3.1.3 above. The Construction shall be monitored in conformance with standard city practices and procedures when work is performed in the right-of-way. The City shall have the right to periodically conduct inspections and tests, at its own expense (but not included in the Maximum Public Investment).

3.1.5 As-Built Drawings of Streetscape Enhancements. After completion of the Construction activities, the Developer shall submit to the City as-built drawings of the Streetscape Enhancements pursuant to standard city practices and procedures. Upon final approval of the as-built drawings, the Developer may submit an invoice to the City for the City Payment pursuant to Section 3.2 below.

3.2 City Payment. After satisfactory completion of Sections 3.1 requirements in conformance with the Agreement, the Developer may invoice the City for the City Payment equal to the Maximum Public Investment so long as the total cost of the Streetscape Enhancements exceed the Maximum Public Investment. The invoice shall document, to the reasonable satisfaction of the City: the costs of Construction directly relating to the Streetscape Enhancement. The Developer shall also provide any additional information related to the Construction as may be reasonably requested by the City. Within 60 days after the City receives the City Payment invoice, with appropriate documentation, the City shall send the Developer a check for the City Payment.

3.3 City Made Third-Party Beneficiary and Indemnification. The Developer shall expressly provide that the City is a third-party beneficiary in any contract between the Developer and any entity performing design or Construction related work on the Streetscape Enhancements, including the contract between the Developer and its engineer and between the Developer and the Streetscape Contractor. The Developer shall ensure that any entity with which the Developer contracts for Streetscape Enhancements related work shall indemnify, hold harmless, and defend the City to at least the same extent that the contracting entity agrees to indemnify, hold harmless, and defend the Developer.

4. Time of the Essence. Notwithstanding any other provision contained in this Agreement, the City shall have no obligation to and shall not make any payment to the Developer pursuant to this Agreement nor shall Developer be obligated to make the Streetscape Enhancements if the requirements of Sections 3.1.1, 3.1.2 and 3.1.3 are not completed within four months after the date of contract provided above or if the Construction activities for the Streetscape

Enhancements fail to commence within six months after the City has authorized the Construction in pursuant to Section 3.1.4 above.

5. Address Contact Information. The payment to the Developer pursuant to this Agreement shall be mailed to:

Attn: Real Estate Director
Self-Help
301 W. Main Street
Durham, NC 27701
Telephone: 919-956-4400
Fax: 919-956-4600
Email: kim.cameron@self-help.org

When a notice is required or permitted by this Agreement, it shall be given by written notice to the City by delivery to:

Director
Office of Economic & Workforce Development
City of Durham
807 East Main Street, Suite 5-100
Durham NC 27701
Telephone: 919-560-4965
Fax: 919-560-4986
Email: kevin.dick@durhamnc.gov
and

Director
Public Works
City of Durham
101 City Hall Plaza,
Durham NC 27701
Telephone: 919-560-4326
Fax; 919-560-4316
Email: marvin.williams@durhamnc.gov

To Developer by delivery to:

Attn: General Counsel
Self-Help
301 W. Main Street
Durham, NC 27701
Telephone: 919-956-4400

Fax: 919-956-4600

Email: dave.shumannfang@self-help.org

6. Change of Address. Date of Notice Deemed Given. A change of address, fax number, email or person to receive notice may be made by either party by notice given to the other party. All notices and other communication required or permitted under this agreement shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested.. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

7. EEO Provisions. During the performance of this Agreement the Developer shall ensure the following:

(1) The Streetscape Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Developer shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Developer shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions.

(2) The Streetscape Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Developer; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.

(3) The Streetscape Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding.

(4) In the event of the Developer's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Developer ineligible for further City contracts.

(5) Unless exempted by the City Council of the City of Durham, the Streetscape Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

8. City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

9. SDBE. [INTENTIONALLY OMITTED]

10. Complete Construction without Extra Cost. Except to the extent otherwise

specifically stated in this Agreement, the Developer shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Construction.

11. Assignment. Without the City's written consent, the Developer shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Developer and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Developer duties that arise out of this Agreement and all of the City's claims that arise out of this Agreement.

12. Choice of Law and Forum. This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

13. Modifications. Entire Contract. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a Deputy or Assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

14. City Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this Agreement or the Developer's services under this Agreement, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

15. Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

16. Exhibits. The following exhibits are made a part of this Agreement:

Exhibit A, "CJT Streetscape Plan" (containing 1 page);

In case of conflict between an exhibit and the text of this Agreement excluding the exhibit, the text of this Agreement shall control.

17. Indemnification. (a) To the maximum extent allowed by law, the Developer shall defend, indemnify, and save harmless Indemnities from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Developer, Streetscape Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Developer shall at its sole expense defend Indemnities with legal counsel reasonably acceptable to City.

(b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnities" means City and its officers, officials, independent contractors, agents, and employees, excluding the Developer.

(c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Developer under this contract.

(e) Limitations of the Developer's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Developer to indemnify or hold harmless Indemnities against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnities.

18. Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

19. Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

20. Severability. If any provision of this agreement shall be unenforceable, the remainder of

this contract shall be enforceable to the extent permitted by law.

21. Compliance with Law. In performing all of the Construction, the Developer shall comply with all applicable law.

22. No Third Party Rights Created. This Agreement is intended for the benefit of the City and the Developer and not any other person.

23. E-Verify Compliance. For purposes of this E-Verify Compliance section, the Developer shall be referred to as the "Contractor". The Contractor represents and covenants that the Contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). In this E-Verify Compliance section, "contractor," "its subcontractors," and "comply" shall have the meanings intended by NCGS 160A-20.1(b). The City is relying on this section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

IN WITNESS WHEREOF, the City and the Developer have caused this agreement to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

_____ By: _____

Pre Audit Certificate

SELF-HELP VENTURES FUND

ATTEST:

Secretary By: _____

President

(SEAL)

State of _____ SELF-HELP VENTURES FUND

County of _____

I, a notary public in and for the aforesaid county and state, certify that
_____ personally appeared
before me this day and stated that he or she is _____ Secretary of SELF-HELP
VENTURES FUND, a non-profit corporation, and that by authority duly given and as the act of
the corporation, the foregoing contract or agreement with the City of Durham was signed in its
name by its _____ President, whose name is
_____, sealed with its corporate seal, and attested
by him/herself as its said Secretary or Assistant Secretary. This the _____ day of
_____, 20_____.

My commission expires: _____

Notary Public